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SENT VIA EMAIL

May 13, 2020

Judy Dubois
Registry Officer
Canadian Human Rights Tribunal
160 Elgin Street, 11th Floor
Ottawa, ON K1A 1J4

Dear Ms. Dubois:

Re: FNCFCSC et al v AGC (CHRT File T1340/7008) – Responding to Caring Society’s Procedural Concerns

We write in response to the Panel’s request of May 6, 2020, for a response to concerns regarding procedure raised by the Caring Society in a letter to the Tribunal dated May 5, 2020.

We would like to start by acknowledging the Caring Society’s concern regarding the April affidavits filed by NAN,¹ and by taking full responsibility for the failure to have had sworn versions follow in a timely manner. We understand that the practice in these proceedings has long been that, when logistical reasons have precluded the filing of a sworn affidavit on a filing deadline, an unsworn version has been filed with a sworn version being provided shortly thereafter. This practice has not been unique to NAN. Through inadvertence, in a context of transfer to working from home and having energies focused on settlement discussions (discussed by way of separate letter) and COVID-related work, our follow-up with the April affidavits slipped through the cracks. We apologize for this. The issue was brought to our attention through the Caring Society’s letter to the Tribunal last week. We subsequently served all parties with sworn versions the evening of Monday, May 11, 2020. (Due to an issue with email service, the Commission was not served until the morning of Tuesday, May 12, 2020.) Sworn versions were filed with the Tribunal on May 12, 2020.

The Caring Society’s letter to the Tribunal expresses concerns about the filing of unsworn affidavits and the filing of a joint affidavit. NAN agrees that it is not common for affidavits to be sworn by more than one deponent but does not agree that this constitutes a “novel” procedural approach.² NAN first filed a joint affidavit by Dr. Wilson and David Barnes in January 2017. NAN does not recall any concerns being raised at the time with the affidavit. When preparing affidavits in support of its RQ

¹ Affidavit of Odi Dashesambu filed April 9, 2020, in support of NAN’s response to the Attorney General of Canada’s March 4th submissions; affidavit of Bobby Narcisse filed April 14, 2020, in support of NAN’s reply on the RQ motions.

² E.g. *Cassie v Canada (Citizenship and Immigration)*, 2018 CanLII 12212 (CA IRB); *Rules of Civil Procedure*, RRO 1990, Reg 194, R. 4.06(4).



motions in late 2019, NAN decided that consistency was desirable, and NAN again filed a joint affidavit of Dr. Wilson and David Barnes (an unsworn version was filed on November 26, 2019, with a sworn version filed on December 3, 2019). Again, no concerns were raised with NAN at that time.

NAN proposes the following going forward:

- Should any party be unable, for logistical reasons, to have a sworn version of an affidavit filed on a filing deadline, the party will advise all other parties and file an unsworn version. The filing party must file a sworn version expeditiously, and in any event no later than seven (7) days following the filing deadline. Sworn versions will always be provided in advance of cross-examinations.
- Should any party have a procedural concern with something filed by another party, the party with the concern shall raise it in a timely manner with the filing party. The relevant parties will attempt to find a mutually agreeable resolution to the matter. Only if no resolution is found will the concern be raised with the Tribunal.

NAN believes the above will achieve the following goals:

1. Ensuring communication between the parties regarding filing of unsworn affidavits;
2. Ensuring that in situations where unsworn affidavits are filed, the sworn versions will follow in a timely manner;
3. Ensuring the parties raise procedural concerns with each other in a direct and timely manner;
4. Ensuring the parties speak with each other prior to involving the Panel, so that the Panel may continue its important substantive work.

NAN appreciates the opportunity to respond to the letter the Caring Society sent to the Tribunal last week, and we thank the Panel for its consideration of the above.

Yours very truly,



Julian N. Falconer

cc. All parties' counsel (via email)

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